

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,

NAGPUR BENCH, NAGPUR

Criminal Application No. 2290 of 2006

Office Notes, Memoranda of Coram,

appearances, Court's orders or directions : Court's or Judge's orders
and Registrar's orders.

Mr.Rajesh V. Shah, Adv. for the
Applicants.

CORAM : R.C.Chavan, J.

DATE : August 22, 2006.

Heard learned counsel for the Applicants.

By this application u/s. 482 of the Code of Criminal Procedure, the applicants - who have been ordered to be made co-accused by the learned Judicial Magistrate, First Class, Kuhi in crime no. 6020 of 2006 while rejecting the applicant no.1's application for return of property on suprutnama, challenge the said order on the ground that the learned Magistrate could not have passed such an order in exercise of power u/s. 319 of the Code of Criminal Procedure without there being any evidence before him at the stage when the charge sheet was not even filed.

The learned Magistrate has indeed invoked powers u/s. 319 of the Code of Criminal Procedure even before filing of charge sheet while disposing of applicant's application for release of property on

suprutnama. This was thoroughly unwarranted and therefore, justifies exercise of inherent jurisdiction by this Court u/s. 482 of the Code of Criminal Procedure for quashing of said order. Hence the order passed by the learned Judicial Magistrate, First Class, Kuhl on 24.4.2006 directing the prosecution to add the applicants as co-accused u/s. 319 of the Code of Criminal Procedure is quashed and set aside. This shall not be an impediment for the investigating machinery to independently investigate and prosecute the applicants should they be found involved in any offence.

The application is allowed in the above terms and accordingly, disposed of.

JUDGE

ssj

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,

NAGPUR BENCH, NAGPUR

First Appeal No.354 of 1997

Office Notes, Memoranda of Coram,

appearances, Court's orders or directions : Court's or Judge's orders
and Registrar's orders.

Mr.Kankale, A.G.P. for the Appellants.

CORAM : Smt.V.A.Naik, J.

DATE : August 11, 2006.

Heard Mr.Dharaskar, learned counsel for the Applicants-respondents and Mr.Kankale, A.G.P. for the Appellant-State.

By this Civil Application No.1197 of 2006, the applicants seek for release of the decretal amount of Rs. 3,19,165/- which the State of Maharashtra has deposited in fixed deposit with the State Bank of India. It is further prayed that the applicants be permitted to furnish security instead of bank guarantee for withdrawal of the amount of Rs.3,19,165/-.

When this matter came up for hearing on the Civil Application No. 171 of 2001 on 8th March, 2001, this Court passed an order permitting the applicants to withdraw an amount of Rs.3,00,000/- out of the amount of Rs.6,19,165/- deposited by the Appellant-State with the State Bank of India. Since the applicants were not able to furnish bank guarantee for withdrawal of the

amount of Rs.3,00,000/-, they filed an application for modification of the order dated 8th March, 2001 with a view to permit them to furnish security instead of bank guarantee. This Court favourably considered the application and by an order dtd. 12th September, 2001, allowed the applicants to withdraw the amount of Rs. 3,00,000/- after furnishing of security and surety for the amount of Rs.3,00,000/-. This Court, however, directed that the bank guarantee would continue to the extent of 50 % of the amount. It is, thus, clear that though the Civil Application No.171 of 2001 was filed by the applicants for withdrawal of the entire decretal amount of Rs.6,19,165/- and by an order passed by this Court on 8th March, 2001, the applicants were permitted to withdraw only approximately half of the amount i.e. Rs. 3,00,000/-.

By this Civil Application, the applicants seek permission to withdraw the balance amount of Rs. 3,19,165/-. The applicants have claimed that they are senior citizens and the applicant namely Raghunath Tupat is suffering from Airborne Contact Allergies. It is apparent that this Civil Application for withdrawal of the amount of Rs.3,19,165/- in effect seeks the modification of the order passed by this Court on 8.3.2001. Though by the Civil Application No. 171 of 2001 the applicants have sought permission to withdraw the entire decretal amount, the permission

was granted for withdrawing only half of the decretal amount by hearing the learned counsel for both the parties. I see no reason, much less a valid reason for modifying the order dt. 8.3.2001, which is passed by this Court after considering the arguments advanced on behalf of both the parties. Moreover, the medical certificate filed on record to show that the applicant Raghunath was suffering from Airborne Contact Allergies would not be of any substantial help to the applicants to seek withdrawal of the amount of Rs. 3,19,000/-, as prayed by the applicants. Since some of the applicants are senior citizens, it is prayed on behalf of the applicants that this matter be heard by a fixed date.

Considering the facts of the case and also considering the fact that some of the applicants are senior citizens, the Office to list this matter for final hearing in the category of the matters pertaining to senior citizens.

The Civil Application No. 1197 of 2006 is, thus dismissed and accordingly disposed of.

JUDGE

ssj

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,

NAGPUR BENCH, NAGPUR

First Appeal No.234 of 1987

Office Notes, Memoranda of Coram,

appearances, Court's orders or directions : Court's or Judge's orders
and Registrar's orders.

Mr.R.R.Joharapurkar, Adv. for the
Appellant.

CORAM : Smt.V.A.Naik, J.

DATE : August 11, 2006.

Heard.

This is an application for reviewing the order dated 21st November, 2005 and for direction to hear both the appeals i.e. First Appeal Nos.234 of 1987 and 81 of 1990 together.

Heard Mr.R.R.Joharapurkar, Adv. for the Appellant and Mr.Joshi, Adv. for the Respondents.

It is brought to the notice of this Court that two separate First Appeals were preferred against the orders passed by the trial Court. The appellant herein preferred First Appeal No.234 of 1987 whereas the respondents preferred First Appeal No.81 of 1990. Earlier First Appeal No.234 of 1987 and First Appeal No. 81 of 1990 were preferred before this Court. However, due to the increase in the pecuniary limits of jurisdiction of the District Court, the First Appeal No.81

of 1990 was transferred to the District Judge, Nagpur. It is further brought to the notice of this Court that, by earlier order passed by this Court, it was directed that the First Appeal No.81 of 1990 and First Appeal No.234 of 1987 to be heard together so as to prevent any possibility of conflict in the decision of the the two First Appeals. However, in view of the order passed by this Court on 21st November, 2005, the First Appeal No.81 of 1990 came to be transferred to the District Judge, Nagpur and the District Judge, Nagpur was directed to expedite hearing of First Appeal No.81 of 1990. It is, however, submitted by both the parties by counsel for both the parties that the First Appeal No.61 of 1990 is not decided till this date by the District Court.

In view of the aforesaid facts, it is prayed on behalf of the appellant that it is necessary to review the order passed by this Court on 21st November, 2005 and further to direct the District Judge, Nagpur to transfer the First Appeal No.81 of 1990 to this Court for hearing the present appeal and the First Appeal No.81 of 1990 together. To avoid any conflict in the decisions in the afore-said two appeals which arise out of the same impugned order passed by the trial Judge, it is necessary to direct the District Judge to transfer the First Appeal No.81 of 1990 to this Court for hearing the First Appeal No.81 of 1990 along with the present First Appeal No. 234 of 1987. The Civil Application No.547 of 2006 is,

therefore, allowed.

The order dt. 21.11.2005 is modified and the District Judge, Nagpur is directed to transfer the First Appeal No.81 of 1990 to this Court for hearing it along with First Appeal No.234 of 1987. It is further directed that after the record in the First Appeal No.81 of 1990 is received by this Court, the First Appeal No.81 of 1990 be tagged along with the First Appeal No.234 of 1987 for hearing. Since the matters pertain to the year 1987 and 1990, these appeals be taken on Board for final hearing immediately after the First Appeal No.81 of 1990 is received in this Court. The Civil Application is, therefore, allowed and disposed of.

JUDGE

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